Office - Supreme Court, U.S
FILED
MAR 19 1984
ALEXANDER L. STEVAS
CLERK

No. 83-1369

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

WILLIAM W. BRYSON,

Petitioner,

v.

MACFIELD TEXTURING, INC.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

BRIEF IN OPPOSITION TO PETITION

W.T. CRANFILL, JR.
3450 NCNB Plaza
Charlotte, N. C. 28280
704 372-3680

Of Counsel:
BLAKENEY, ALEXANDER & MACHEN
Charlotte, N. C. 28280

TABLE OF CONTENTS

	Page No.
The Petition Misrepresents The State Of The Law As To The Application Of A Constructive Receipt Theory To A Title VII Case	1

TABLE OF AUTHORITIES

Cases:

Archie v. Chicago Truck Drivers, Etc., 585 F.2d 210 (7th Cir. 1978)	11
Bell v. Brown, 557 F.2d 849 (D.C.Cir. 1977)	9
Decker v. Anheuser-Busch, 632 F.2d 1221 (5th Cir. 1980)	2
Gonzalez v. Stanford Applied Engineering, Inc., 597 F.2d 1298 (9th Cir. 1979)	7
Pinkard v. Pullman-Standard, 678 F.2d 1211 (5th Cir. 1982)	12
Rea v. Middendorf, 587 F.2d 4 (6th Cir. 1978)	11
Rice v. New England College, 676 F.2d 9 (1st Cir. 1982)	13

	Page No.
Thomas v. KATV Channel 7, 692 F.2d 548 (8th Cir. 1982), cert. den., 103 S.Ct. 1431, 75 L.Ed.2d 790 (1983)	4, 5, 8
Statutes:	
42 U.S.C. §2000e, et seq.	2
42 U.S.C. §2000e(f)(1)	3

No. 83-1369

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

WILLIAM W. BRYSON,

Petitioner,

v.

MACFIELD TEXTURING, INC.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

BRIEF IN OPPOSITION TO PETITION

The Petition Misrepresents The State Of The Law As To The Application Of A Constructive Receipt Theory To A Title VII Case

The Petition argues that the opinion of the Court of Appeals for the Fourth Circuit in this case conflicts with decisions of other circuits. Review is sought of a decision applying a constructive receipt

ruling as between a claimant and his duly designated and authorized attorney at law, in order to determine whether a plaintiff's Title VII[1] suit was timely filed.

Macfield Texturing, Inc. respectfully submits that the Petition vainly endeavors to create an issue or controversy where none in fact exists. Each of the allegedly conflicting decisions cited by the Petition is either completely inapposite to, or factually distinguishable from, the decision in the case at hand.

It is not the purpose of this Brief in Opposition to reiterate the legal bases supporting the decisions below. Those decisions, attached as "exhibits" to the Petition, are clear, well-reasoned and self-explanatory.

The Petition disingenuously asserts that Decker v. Anheuser-Busch, 632 F.2d 1221

---

[1] 42 U.S.C. §2000e et seq.

(5th Cir. 1980), one of the cases cited by the District Court below, should not have been followed because it was subsequently vacated and remanded. The District Court in this case, however, was aware of this subsequent case history, and observed that Decker had been vacated on grounds other than those for which it was cited.

The sole asserted ground for invoking this Court's jurisdiction is the contention that certain Circuit Court decisions are in conflict with the Fourth Circuit's opinion below. In this case, it has been held that notice to a claimant's attorney at law, duly designated and authorized by him as his representative with respect to all aspects of his employment discrimination charge, constitutes notice to the claimant sufficient to begin the Title VII ninety-day limitations period.[1] Upon examination,

---

[1] 42 U.S.C. §2000e(f)(1).

however, the decisions cited by the Petition demonstrate no such conflict.

The Petition's reliance on Thomas v. KATV Channel 7, 692 F.2d 548 (8th Cir. 1982), cert. den., 103 S.Ct. 1431, 75 L.Ed.2d 790 (1983), is misplaced for several reasons.

The opinion in Thomas clearly demonstrates that there are critical distinctions between the facts of that case and the case at hand. In Thomas, the claimant's "right-to-sue" notice was received by an employee of the claimant's attorney, but the attorney denied having confirmed with the Equal Employment Opportunity Commission his representation of the claimant. On those facts, the Thomas court refused to equate receipt by an employee of the claimant's attorney with receipt by the claimant. The Thomas court, however, went on to imply that its holding would differ under other

circumstances -- circumstances which are present in the case at hand:

> "The court in Craig, however, indicated that notice to a designated representative of an aggrieved party could satisfy statutory requirements if the notice was 'addressed in accordance with the specific directions of the employee, and receipt [was] acknowledged personally by the designated representative.' (emphasis added)."
>
> Thomas v. KATV Channel 7, 692 F.2d at 550.

As shown below, the "right-to-sue" notice in the case at bar was indeed addressed in accordance with the specific directions of the claimant and receipt was acknowledged personally by the designated representative.

The attorney who represented Bryson in connection with the Equal Employment

Opportunity Commission proceedings has acknowledged that he notified the Commission of his representation of Bryson. Further, that attorney requested the Commission to direct all correspondence to him as Bryson's attorney.

In fact, as the District Court noted, until more than two months after Bryson had personally received a copy of his "right-to-sue" notice, he continued to advise that he desired this attorney's representation.

By authorizing his attorney to represent him before the Commission and to receive all correspondence from the Commission on his behalf, Bryson gave specific directions to the Commission which were followed when that agency addressed a copy of the notice to Bryson's attorney. Further, it is undisputed that receipt of the notice was personally acknowledged by Bryson's duly authorized and designated attorney.

The distinction between the personal receipt of the claimant's notice by his duly authorized and designated representative -- in contrast to receipt by some other person -- is of critical significance because the professional, fiduciary responsibilities of an attorney to his client are safeguards protecting a Title VII claimant from any inequities that might conceivably arise from other applications of a constructive receipt theory.

Thus, exactly contrary to the Petition's assertions, it hardly appears that the Eighth Circuit has decided the precise issue presented by the instant case or that it would decide this case differently than the Fourth Circuit.

The Thomas opinion also contradicts the Petition's assertion that Thomas is in conflict with decisions such as the one below and with Gonzalez v. Stanford Applied

Engineering, Inc., 597 F.2d 1298 (9th Cir. 1979). Thomas cannot be in conflict with Gonzalez because the two cases decided different issues. Indeed, the Thomas opinion carefully distinguished the facts of that case from those appearing in Gonzalez and expressly reserved opinion on the Gonzalez decision of a different issue:

> "The Ninth Circuit has held that 'when the request for issuance of a right to sue letter comes from a claimant's attorney, notice to the attorney that right to sue has been granted starts the time running.' Gonzalez v. Stanford Applied Eng'g., Inc., 597 F.2d 1298, 1299 (9th Cir. 1979)(per curiam). In the instant case, the evidence is that appellant, not Hollingsworth, requested issuance of the right to sue letter; at most, all Hollingsworth requested was a copy of

appellant's right to sue letter. We express no opinion as to the validity of the Gonzalez holding."

Thomas v. KATV Channel 7, 692 F.2d at 550-551, n.5.

Bell v. Brown, 557 F.2d 849 (D.C.Cir. 1977), also is inapposite to the case at hand. As the District Court in this action observed:

"In Bell v. Brown, 557 F.2d 849 (D.C.Cir. 1977), an action by a federal employee under 42 U.S.C. Section 2000e-16(c), the court rejected the constructive receipt doctrine. The court founded its decision upon the belief that the procedural scheme of Title VII, and Section 2000e-16(c) in particular, is based on the assumption that Title VII complainants often will lack counsel and upon the facts that the responsible federal agency, the Civil Service Commission, issued

regulations calling for personal receipt of notice by the plaintiff as well as counsel and interpreted Section 2000e-16(c) as directing the limitation period to commence upon receipt of notice by the complainant. Here, however, there is no indication that the EEOC has similarly advised or directed that notice may not be imputed. Consequently, the reasoning in Bell does not compel a similar result under Section 2000e-5(f)(1). Cooper v. Lewis, 644 F.2d 1077, 1085-87 (5th Cir. 1981). Furthermore, this Court perceives no unfairness in the constructive receipt doctrine inasmuch as the complainant is obviously represented by counsel, the person who can and should promptly advise his client about the ramifications of a Notice of Right to Sue."

Again, Archie v. Chicago Truck Drivers, Etc., 585 F.2d 210 (7th Cir. 1978) is factually distinguishable from the instant case. In Archie, the claimant's "right-to-sue" notice was received by the plaintiff's wife. Thus, the case did not present or decide the issue of applying a constructive receipt theory as between an attorney and his client. As has been noted previously, giving effect to a constructive receipt is particularly appropriate as between an attorney and his client, due to the professional, fiduciary responsibilities which accompany such a relationship.

The Petition also cites Rea v. Middendorf, 587 F.2d 4 (6th Cir. 1978), but an examination of that opinion reveals that it does not in any fashion deal with a constructive receipt theory. In Rea, the claimant received his notice one week before his attorney received a copy. The applicable

time limitation required commencement of a civil action within thirty days of receipt of the notice, but did not specify whether the time ran from receipt by the claimant or from receipt by his representative. In these circumstances, the court held that personal notice to the claimant would start the running of the limitations period. Such holding in no way conflicts with a holding that, under certain circumstances, notice first received by a duly-designated and authorized attorney at law also begins the limitations period.

Pinkard v. Pullman-Standard, 678 F.2d 1211 (5th Cir. 1982), also is distinguishable, because it does not address the issue of when the ninety-day limitations period begins. In Pinkard, the plaintiffs filed suit before any "right-to-sue" notice had been issued by the Equal Employment Opportunity Commission. Thus, the Pinkard

court did not address a limitations issue, but decided an "exhaustion of administrative remedies" issue, an entirely distinct condition precedent to a Title VII suit.

Finally, Rice v. New England College, 676 F.2d 9 (1st Cir. 1982), lends no more support to the Petition arguments than the other cited cases. Again, the Rice opinion does not even address any constructive receipt theory. The plaintiff in Rice merely filed her complaint on the ninety-first day after receipt of her "right-to-sue" notice, and the court held that her action was time-barred.

In summary, the Petition absolutely fails to corroborate its assertion that the decisions of the courts below are in conflict with the decisions of other Circuit Courts. As shown above, the Fourth Circuit's decision in this case does not conflict with the decisions cited by the Petition, but merely

supplements existing case law on a quite narrow aspect of a limitations period applicable to Title VII actions. Because the asserted conflict between Circuit Courts does not in fact exist, Macfield Texturing, Inc. respectfully urges that the Petition be denied.

W. T. Cranfill, Jr.
3450 NCNB Plaza
Charlotte, N. C. 28280

Counsel of Record

Of Counsel:

William L. Auten
John C. Miller
Blakeney, Alexander & Machen
Charlotte, N. C.